



Montana Mediation Association

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SENATE JUDICIARY
Exhibit No. 4
Date 2-9-07
Bill No. SB-393

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February 8, 2007

Senator Jesse Laslovich, Chairman
Senate Judiciary Committee
State Capital
Helena, Montana 59620:

Re: Support for **Senate Bill 393**, with changes

Dear Chairman Laslovich and members of the Senate Judiciary Committee:

I am writing on behalf of the Montana Mediation Association. Our Association promotes facilitative mediation. The Association has about 70 associate, full, and full with family designation members across the state.

Our Association supports SB 393, but we believe that two changes should be made to SB 393 as presently drafted. I've attached a copy of SB 393 illustrating the changes we suggest in red text.

First, we suggest replacing references to "custody and visitation" with the term "parenting" to be consistent with the terminology and usage of Title 40, Part 4 of the MCA. The changes to the Uniform Marriage and Divorce Act made by the 1997 Legislature mostly abandoned the prior custody and visitation language of the UMDA, intending to help divorcing parents focus on the care of their children.

Second, facilitative mediation as contemplated by Section 40-4-301 is not readily available throughout the state. I suspect that the mediator list referred to in Section (4) of SB 393 does not exist in many judicial districts. Our Association intends to address this in the near future; as an example, the Clerk of the District Court in Missoula County does not maintain a list of mediators pursuant to Section 40-4-306, MCA.

Thank you.

Kerry Newcomer, President
Montana Mediation Association

COPY

An association of professional mediators and neutrals

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SENATE BILL NO. 393
INTRODUCED BY K. GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COURT TO ORDER MEDIATION IN A MARRIAGE DISSOLUTION IN WHICH CUSTODY OF MINOR CHILDREN IS DISPUTED AND THE PARTIES CANNOT AGREE ON THE TERMS OF CUSTODY; AND AMENDING SECTION 40-4-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-301, MCA, is amended to read:

"40-4-301. Family law mediation -- exception. (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) If the parties to a proceeding pursuant to this chapter are unable to agree on the terms for the dissolution of their marriage regarding custody parenting of minor children, the court shall require mediation, unless the court finds that the case is not appropriate for mediation or that mediation services are not reasonably available. The purposes of mediation may include:

(a) reducing acrimony between the parties over the custody of or visitation with parenting of a minor child;

(b) the development of a visitation-parenting agreement that is in a child's best interests;

(c) providing the parties with informed choices and, when possible, giving the parties the responsibility for making decisions about child custody and visitation parenting their child;

(d) providing a structured, confidential, and nonadversarial setting that will facilitate the cooperative resolution of custody and visitation parenting disputes and minimize the stress and anxiety to which the parties and the child may be subjected; and

(e) reducing the likelihood of relitigation of custody and visitation parenting disputes.

(2)(3) The court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.

~~(3)~~(4) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of all parties, mediators not on the list may be appointed.

~~(4)~~(5) The court may adopt rules to implement this part."

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